

Application No. 10/799,839
Amendment dated August 11, 2006
Reply to Office Action of July 13, 2006

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Communication mailed on July 13, 2006.

Claim 18 is amended, no claims are canceled or added; as a result, claims 1-20 are now pending in this application.

Information Disclosure Statement

Applicant respectfully requests that a copy of the 1449 Forms, listing all references that were submitted with the Information Disclosure Statements filed on March 12, 2004, June 9, 2005, and February 28, 2006, marked as being considered and initialled by the Examiner, be returned with the next official communication.

Election of Species

The Examiner stated in the Office Communication of July 13, 2006, that Applicant is required under 35 U.S. C. 121 to elect a single disclosures species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Additionally, the Examiner stated that currently claim 1 is a generic claim. The Examiner required election of a single disclosed species from the following candidates:

Embodiment 1: claims 1, 2 and 18-20

Embodiment 2: claims 1 and 3-5

Embodiment 3: claims 1, 6-7, 10-11 and 14-15

Embodiment 4: 1 and 8-9

Embodiment 5: 1 and 12-13

Embodiment 6: 1 and 16-17

Applicant provisionally elects, with traverse, to prosecute the invention of Embodiment 3. The Restriction Requirement is traversed, at least in part, on the basis that restriction requirements are optional in all cases. MPEP 803. As the section further states, if the search and examination can be made without serious burden, the Examiner must examine it on the merits.

Rev. 12/05

Page 14 of 17

Application No. 10/799,839
Amendment dated August 11, 2006
Reply to Office Action of July 13, 2006

Applicant notes that independent claim 1 is generic to all the embodiments shown above, as stated by the Examiner in section 2 of the July 13, 2006, Office Communication. As such, Applicant submits that each of the embodiments shown above, classified as "species" by the Examiner, is covered by the recited elements of independent claim 1, thereby making independent claim 1 generic to all the embodiments listed above.

MPEP section 806.04(f) states that "a requirement for restriction to a single species may be proper if the species are mutually exclusive", which "may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope." Independent claim 1 is generic and is included in all embodiments shown above, Embodiment 1 is not mutually exclusive of any other embodiments, Embodiment 2 more clearly defines the elements recited in independent claim 1, Embodiment 3 provides additional examples of compound formulations covered by the recitation of independent claim 1, and Embodiments 4-6 more clearly define the elements recited in Embodiment 3. Hence, all combinations of embodiments "overlap in scope". As such, Applicant respectfully submits that restriction is improper with regard to the present disclosure because the listed species (i.e., embodiments) are not mutually exclusive and do overlap in scope.

Therefore, Applicant respectfully submits that in searching for references regarding claims covering one of the embodiments listed above, the Examiner will be identifying references applicable to each of the claims covering the other embodiments and that examination thereof can be made without serious burden.

Further, Applicant believes the Examiner has only identified the species in relation to specific claims. Applicant respectfully submits that per MPEP section 806.04(e) this is inappropriate as "claims are never species".

In addition, it is submitted that Applicant should not be required to incur the additional costs associated with filing multiple divisional applications in order to obtain protection of the claimed subject matter, given that the present restriction requirement itself follows two previous restrictions of the original application.

Rev. 12/05

Page 15 of 17

Application No. 10/799,839
Amendment dated August 11, 2006
Reply to Office Action of July 13, 2006

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement, and that claims 1-20 be examined on the merits together.

BEST AVAILABLE COPY

Application No. 10/799,839
Amendment dated August 11, 2006
Reply to Office Action of July 13, 2006

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney Donald J. Coulman at (541) 715-1694 to facilitate prosecution of this matter.

At any time during the pendency of this application, please charge any additional fees or credit overpayment to the Deposit Account No. 08-2025.

CERTIFICATE UNDER 37 C.F.R. §1.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent Office facsimile number (571) 273-8300 on

8/11/2006

Sarah L. Reinhard
Name

Sarah L. Reinhard
Signature

Respectfully Submitted,
Randy L. Hoffman, et al.

By their Representatives,
BROOKS & CAMERON, PLLC
1221 Nicollet Avenue, Suite 500
Minneapolis, MN 55403

By:

Edward J. Brooks III
Reg. No. 40,925

Date:

8/11/2006